

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 IO-14 ISO-00 CIAE-00 DODE-00 PM-07

INR-10 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20

USIA-15 CAB-09 COME-00 DOTE-00 EB-11 FAA-00 SAJ-01

OMB-01 DRC-01 /134 W

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R 191254Z APR 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 1873

INFO USMISSION BERLIN

USMISSION NATO BRUSSELS

USMISSION USUN NEW YORK

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

AMCONSUL MONTREAL

C O N F I D E N T I A L SECTION 01 OF 02 BONN 06234

E.O. 11652: GDS

TAGS: ETRN, PFOR, GW, GE, WB, UK, FR, US, UN

SUBJECT: ALLIED DISCLAIMER ON GDR ADMISSION TO ICAO

REF: (A) STATE 33501; (B) BONN 902

1. WHILE BRITISH RECEIVED FCO APPROVAL FOR DISCLAIMER DRAFT (REF B) FOR USE BY ALLIES ON OCCASION OF GDR ADMISSION TO ICAO, FRENCH REPORTED PARIS HAD SOME RELATIVELY MINOR CHANGES TO SUGGEST, WHICH U.S. AND UK REPS AGREED TO RECOMMEND TO THEIR AUTHORITIES AT APRIL 17 TRIPARTITE MEETING.

2. NEW TEXT IS AS FOLLOWS. BEGIN TEXT:

REGARDING THE ACCESSION OF THE GDR TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, THE GOVERNMENT OF (BLANK)
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WISHES TO RECALL THAT, AS THE CONTRACTING STATES WILL BE

AWARE, (BLANK) HAS SPECIAL RIGHTS AND RESPONSIBILITIES WHICH ARE REFLECTED IN THE QUADRIpartite AGREEMENTS, DECISIONS, AND PRACTICES DATING BACK TO THE WARTIME AND POST-WAR PERIOD AND WHICH CONCERN, INTER ALIA, AIR ACCESS TO BERLIN. IT IS IN THIS FRAMEWORK THAT THE BERLIN CONTROL ZONE, AIR CORRIDORS LINKING THIS ZONE WITH THE AIRSPACE OF THE FRG, AND THE REGULATION OF AIR TRAFFIC WITHIN THE BERLIN CONTROL ZONE AND THE CORRIDORS HAVE BEEN ESTABLISHED. THESE RIGHTS AND RESPONSIBILITIES WILL CONTINUE UNAFFECTED IN THE FUTURE AS THE FOUR POWERS MADE CLEAR IN THEIR QUADRIpartite DECLARATION OF NOVEMBER 9, 1971, WHICH WAS CIRCULATED AS A UN DOCUMENT TO ALL UN MEMBERS ON JUNE 18, 1973. END TEXT.

REQUEST DEPARTMENT'S APPROVAL FOR SLIGHTLY REVISED VERSION ABOVE.

3. RATIONALE PAPER. PER PARA 2, REF A, U.S. REP SIX WEEKS AGO TABLED DRAFT PAPER OUTLINING ALLIED RATIONALE FOR ACCEPTANCE OF GDR UNDER ARTICLE 92 OF CHICAGO CONVENTION. THE UK REP (CROMARTIE) EVENTUALLY REPORTED HIS AUTHORITIES COULD AGREE TO PAPER ALONG LINES WE HAD SUGGESTED, BUT SHARED HIS PERSONAL BELIEF THAT CHANCES OF GDR APPLICATION UNDER ARTICLE 93 MOST REMOTE, AND THAT ALLIES, HAVING MADE DISCLAIMER AT TIME OF GDR APPLICATION UNDER ARTICLE 92, COULD NOT REASONABLY DO MORE.

4. FRENCH AND GERMAN LEGAL STAFFS HAVE BEEN STUDYING OUR RATIONALE PAPER AND, PARTICULARLY IN FRENCH CASE, HAVE BEEN UNABLE TO AGREE TO IT. FRENCH REP (PAYE) HAS TOLD US QUAI LEGAL AND POLITICAL DIVISIONS DO NOT IN FACT AGREE ON APPROPRIATENESS OF GDR APPLICATION UNDER ARTICLE 93. COMMENT: PAYE AND FONOFF REPS HAVE REPORTED

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 06234

RESPECTIVE FONOFF LEGAL STAFFS HAD NOT PREVIOUSLY
FOCUSED VERY CLEARLY ON IMPLICATION OF ACCEPTANCE OF GDR
UNDER ARTICLE 92. WHILE THE POLITICAL JUDGMENTS REMAIN
AS REPORTED REF B, PAYE HAS SAID DIVISIONS IN QUAI PRE-
CLUDE FRENCH AGREEMENT TO THE TYPE OF FORMAL RATIONALE
PROPOSED BY THE DEPARTMENT. END COMMENT.

5. FRENCH HAVE ASKED THAT, IN VIEW OF THE LEGAL-
POLITICAL SPLIT IN PARIS, CONSIDERATION OF SUCH A
RATIONALE BE PUT OFF UNTIL THE GDR ACTUALLY APPLIES OR WE
HAVE CLEAR INDICATION WHEN AND UNDER WHAT PROVISIONS IT
WILL APPLY. BRITISH ENDORSE THIS REQUEST, WHICH CORRE-
SPONDS TO VIEWS THEY HAVE OFTEN EXPRESSED (PARA 3 ABOVE).
IN PUSHING FOR THE RATIONALE PAPER WE HAVE NOTED THAT
(A) THE DIFFERENCES IT HAS BROUGHT TO THE SURFACE IN
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PARIS AND BONN INDICATE THE PROJECT MIGHT WELL BE
NECESSARY, AND (B) THAT THE USG AS DEPOSITORY WOULD HAVE
SPECIAL SITUATION VIS-A-VIS GDR ADHERENCE TO THE CHICAGO
CONVENTION.

6. COMMENT: ALTHOUGH WE SEE THE POSSIBLE MERITS OF A
RATIONALE PAPER, DISCUSSION IN RECENT WEEKS HAS MADE
CLEAR THE LEGAL PROBLEMS THE 92-93 ISSUE RAISES. SINCE
IN THE FRENCH VIEW THESE PROBLEMS ARE NOW INSOLUBLE AND
FOR THE BRITISH TO SOME EXTENT IMMATERIAL, WE WONDER IF
IT WOULD NOT NOW BE BEST TO AGREE ON THE DISCLAIMER

(PARA 2 ABOVE) - USEFUL IN CASE OF GDR APPLICATION UNDER
EITHER ARTICLE - AND PUT OFF FURTHER DISCUSSION OF THE
RATIONALE PAPER UNTIL MORE IS KNOWN OF GDR INTENTIONS.
DEPARTMENT'S COMMENTS REQUESTED.
HILLENBRAND

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To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005